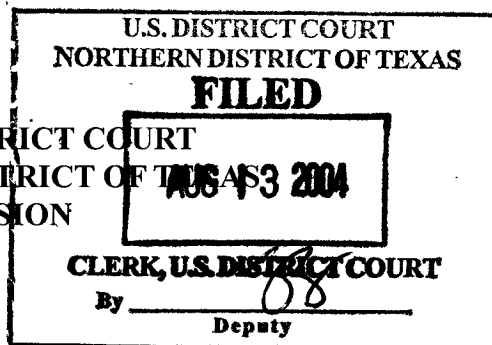


**ORIGINAL**

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION



**JAMES PAPA**

**Plaintiff,**

**v.**

**ROBERT FEINSTEIN d/b/a  
RF VIDEO**

**Defendant.**

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**CIVIL ACTION NO. 304CV-299-N**

**PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT AND NOTICE OF MOTION**

To: Defendant **ROBERT FEINSTEIN d/b/a RF VIDEO**, by and through his attorney of record, Charles Adlai Rich, RICH AND LOW L.L.C. 4144 North Central Expressway, #515, Dallas, Texas 75204.

A motion for partial summary judgment against Defendant, **ROBERT FEINSTEIN d/b/a RF VIDEO**, has been filed with the Court and is set for hearing in the courtroom of the United States District Court, Northern District of Texas District, Judge Godbey, 1100 Commerce Street, Dallas Texas, 75242 on the \_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_.m. Summary judgment is proper in this case because there is no genuine issue as to any material fact and Plaintiff is entitled to judgment as a matter of law. Specifically, Defendant **ROBERT FEINSTEIN d/b/a RF VIDEO** has failed to admit or deny the allegations contained in Plaintiff's Original Complaint and therefore has admitted all facts necessary to prove Defendant's liability for Plaintiff's copyright infringement cause of action.

Plaintiff's motion for partial summary judgment is based on the attached brief in support of points and authorities and summary judgment evidence, all pleadings and papers on file, and argument to be presented at hearing.

## **I. INTRODUCTION AND SUMMARY**

Plaintiff is the owner of numerous copyrights and trademarks associated with professional wrestling. Defendant owns and operates an internet based business that sells video recordings of professional wrestling events and other items related to professional wrestling. Defendant does not have permission to distribute or reproduce recordings of Plaintiff's copyrighted or trademarked material and has therefore infringed on Plaintiff's copyrights and trademarks.

## **II. FACTS UPON WHICH PLAINTIFF RELIES**

On February 12, 2004, Plaintiff filed his Original Complaint and Request for Preliminary Injunction. On April 16, 2004, Defendant filed his Admissions and Denials. Defendant failed to admit or deny six key allegations made by Plaintiff. Under the Federal Rules of Civil Procedure failure to admit or deny an allegation results in the deemed admission of said allegation. Specifically Defendant has admitted the following allegations:

- (1) Plaintiff owns trademarks and common law copyrights related to professional wrestling. *Plaintiff's Original Complaint paragraph 4A;*
- (2) Defendant has reproduced Plaintiff's copyrighted musical material without permission. *Plaintiff's Original Complaint paragraph 4H;*
- (3) Defendant has offered reproductions of Plaintiff's copyrighted musical material for sale. *Plaintiff's Original Complaint paragraph 4H;*
- (4) Defendant offers for sale numerous products using the Plaintiff's trademark "Bad Street USA." *Plaintiff's Original Complaint paragraph 4I;*
- (5) Defendant has no privilege to reproduce or sell any of Plaintiff's copyrighted or trademarked material. *Plaintiff's Original Complaint paragraph 4J;*

(6) Defendant's infringement of Plaintiff's trademarks and copyrights is causing Plaintiff irreparable harm. *Plaintiff's Original Complaint paragraph 4K*; Defendant's deemed admission of the proceeding allegations entitles Plaintiff to summary judgment as to Defendant's liability for copyright infringement.

**RELIEF REQUESTED**

For these reasons, Plaintiff asks the Court to grant this motion and sign a partial summary judgment.

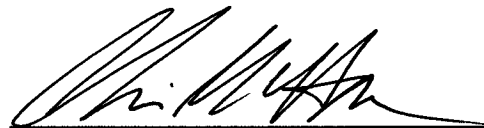
Respectfully submitted,



GREY PIERSON  
State Bar No. 16002500  
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Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing has been served on all counsel of record and all *pro se* litigants by transmitting a true copy of same to such persons via certified U.S. Mail, return receipt requested, to Charles Adlai Rich, RICH AND LOW L.L.C. 4144 North Central Expressway, #515, Dallas, Texas 75204 on this date, August 11, 2004.



CHRIS McHAM